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MEMORANDUM (STAFF REPORT)

TO: Monroe County Planning Commission

FROM: Jerry Coleman

DATE: July 19, 2006

MEETING DATE: July 26, 2006

RE: **ORDINANCE AMENDING SEC. 9.5-120.4 OF THE LAND DEVELOPMENT REGULATIONS RELATING TO DEVELOPMENT NOT AFFECTED BY RESIDENTIAL ROGO (DWELLING UNIT TRANSFER AUTHORIZATION)**

I. BACKGROUND

This memorandum/staff report draws from the suggestions that were previously discussed at the regularly scheduled Planning Commission meeting in Marathon on June 14, 2006, where the Planning Commission recommended continuance to its regularly scheduled June 28, 2006 meeting in Key Largo. On June 28, 2006, the Planning Commission recommended continuance to its regularly scheduled meeting in Marathon on September 13, 2006. Subsequently, these amendments were readvertised by the Planning Commission for its regularly scheduled meeting in Key Largo on July 26, 2006.

The version of the proposed ordinance as presented on June 14, 2006 was amended to incorporate Planning Commission comments and suggestions (see the attached updated version showing underlined changes). The most significant change from the June 14 version comes in subsection (b)(3)(ii), reflecting the Planning Commission's concern that the proposed ordinance did not include a minimum required percentage of inclusionary affordable housing for redevelopment of mobile homes and/or multi-unit residential developments. After discussion, the proposed ordinance was amended to require, again for redevelopment of mobile home parks or multi-unit residential developments, a minimum of 30% of any redeveloped units be set aside for affordable housing. The subarea restriction found in current code Section 9.5-120.4 was also added back in to the proposed version.

Third, the updated version addresses a situation not contemplated by the June 14 version in which an owner of a unit in Big Pine Key or No Name Key wishes to transfer his or her unit offsite. The proposed amendments ordinarily prohibit the transfer of any unit (transient,

affordable or market rate) out of any ROGO subarea or where the receiver site is located in, among other “protected” areas, Big Pine or No Name Keys. The updated version allows the limited transfer of units into Big Pine or No Name Keys only where the sender site was lawfully established in Big Pine or No Name Keys.

Finally, the updated version cleans up and clarifies certain provisions.

II. SUMMARY

The ordinance proposes to replace current Sec. 9.5-120.4, which reads:

~~Sec. 9.5-120.4. Type of development not affected.~~

~~The residential ROGO shall not apply to the development described below:~~

~~(a) *Redevelopment on site:* Redevelopment, rehabilitation or replacement of any lawfully established residential dwelling unit or space which does not increase the number of residential dwelling units above that which existed on the site prior to the redevelopment, rehabilitation or replacement.~~

~~(b) *Transfer off site:* Transfer off site shall consist of either the demolition or a change of use from residential to non-residential of a unit or space from a sender site and the development of a new unit on a receiver site as indicated below.~~

~~a. *Eligibility of sender unit or space:* A hotel room, mobile home, recreational vehicle space, or dwelling unit that is:~~

~~i) In existence as of January 4, 1996; and~~

~~ii) Accounted for in the hurricane evacuation model which forms the basis of ROGO; and~~

~~iii) Lawfully established or subject to a valid unexpired State TRE agreement, may be rebuilt in another part of the unincorporated county subject to the criteria for redevelopment off site.~~

~~(1) *Criteria for redevelopment off site:* In order to redevelop off site, a receiver site must be evaluated for both its structural and site conditions.~~

~~a. *Transfer to a hotel:* A hotel or hotel room may be developed if the:~~

~~(i) Sender unit or space is eligible and provided that it was used as a hotel room or~~

~~recreational vehicle space in accordance with section 9.5-4; and~~

~~(ii) Receiver site meets all of the following criteria:~~

~~1) Is located in the same ROGO subarea as the sender site; and~~

~~2) Receives no negative points when evaluated pursuant to section 9.5-122.3(a)(7) or (8) or (9); and~~

~~3) Is not located in a V zone pursuant to section 9.5-122.3(a)(11); and~~

~~4) Is not located in a coastal barrier resources system pursuant to section 9.5-122.3(a)(12); and~~

~~5) Is not located in an offshore island/conservation land protection area pursuant to section 9.5-122.3(a)(13); and~~

~~6) Is located in close proximity to existing commercial centers; and~~

~~7) Is eligible for infrastructure availability points pursuant to section 9.5-122.3(a)(2); and~~

~~8) Receives an overall ROGO score that is equal to or greater than the overall ROGO score of the sender site pursuant to section 9.5-122.3(a).~~

~~b. *Transfer to affordable housing:* An affordable housing unit may be developed if the:~~

~~(i) Sender unit is eligible; and~~

~~(ii) Receiver unit:~~

~~1) Is an attached dwelling unit; and~~

- 2) ~~Meets the criteria for affordable housing pursuant to sections 9.5-4(A-5) and 9.5-266; and~~

~~(iii) Receiver site meets all of the following criteria:~~

- 1) ~~Is located in the same ROGO subarea as the sender site; and~~
- 2) ~~Receives no negative points when evaluated pursuant to section 9.5-122.3(a)(7) or (8) or (9); and~~
- 3) ~~Is not located in a V zone pursuant to section 9.5-122.3(a)(11); and~~
- 4) ~~Is not located in a coastal barrier resources system pursuant to section 9.5-122.3(a)(12); and~~
- 5) ~~Is not located in an offshore island/conservation land protection area pursuant to section 9.5-122.3(a)(13); and~~
- 6) ~~Is located in close proximity to existing commercial centers; and~~
- 7) ~~Is eligible for infrastructure availability points pursuant to section 9.5-122.3(a)(2); and~~
- 8) ~~Receives an overall ROGO score that is equal to or greater than the overall ROGO score of the sender site pursuant to section 9.5-122.3(a).~~

~~(2) Procedures for transfer off site: A pre-application conference and at a minimum, a minor conditional use permit shall be required for both the sender site and the receiver site.~~

~~A sender unit or space shall be assigned a unique identifier number that shall be used for tracking and monitoring by the planning department. The unique identifier number shall be itemized in the conditional use permits required for both the sender and receiver sites.~~

~~No building permit shall be issued for the new unit on the receiver site until one (1) of the following conditions are met:~~

- a. ~~The unit is demolished as per an issued demolition permit and a final inspection for the demolished unit or space has been completed by the building department for the sender site; or~~
- b. ~~The unit is removed pursuant to a development approval, development order, or a development permit is issued and a final inspection for the removed unit is completed by the building department for the sender site.~~

~~(c) *Nonresidential use:* Nonresidential uses are not affected by residential ROGO.~~

~~(d) *Development not impacting hurricane evacuation times:* Any applicant that can demonstrate with a traffic study acceptable to Monroe County traffic engineers that their proposed development will not impact hurricane evacuation times.~~

All previously authorized residential dwelling units to be located in the area designated as Zone 7 (North Key Largo area) that the 1989 Transportation Analysis found to comply with the above criteria and are exempt.

~~(e) *Public/governmental uses:* Public/governmental uses, including capital improvements [as defined by section 9.5-4(c-5)] and public buildings [as defined by section 9.5-4(P-18)].~~

~~(f) *Other nonresidential development:* Any other use, development, project, structure, building, fence, sign or activity which does not result in a new residential dwelling unit.~~

~~(g) *Vested rights:* Landowners with a valid, unexpired development of regional impact approval granted by the county prior to July 13, 1992, shall be exempt from the residential ROGO system.~~

The updated version of the proposed ordinance, with changes tracked from that version presented to the Planning Commission on June 14, 2006, is as follows:

Sec. 9.5-120.4. Type of development not affected.

The residential ROGO shall not apply to the development described below:

(a) *Redevelopment on-site:* Redevelopment, rehabilitation or replacement of any lawfully established residential dwelling unit or transient unit which does not increase the number of residential dwelling units or transient units above that which existed on the site prior to the redevelopment, rehabilitation or replacement.

(b) *Transfer off-site:* Transfer of lawfully established residential dwelling units or transient units from a parcel or from parcels ("sender site(s)") to another parcel or other parcels ("receiver site(s)") shall be permitted where the development of new residential units or transient units resulting from the transfer conforms both to all otherwise applicable standards in the land development regulations and those additional standards set forth below.

(1) *Criteria for hotel unit and recreational vehicle space transfers:* Hotels, hotel rooms or recreational vehicle spaces may be transferred from sender sites and reestablished at receiver sites continuing the same uses and in the same ROGO subarea if the:

(i) Sender site unit or space was used as a hotel, hotel room or recreational vehicle space in accordance with the governing definitions set forth in Section 9.5-4; and

(ii) The receiver site(s) is (are) not located:

(A) In a V zone pursuant to Section 9.5-122.3(a)(11);

(B) On Big Pine or No Name Keys, unless the sender unit or space was lawfully established on Big Pine or No Name Keys;

(C) In a Tier 1 area; or

(D) In a designated Special Protection Area in which development resulting from the transfer would result in any clearing of native vegetation.

(2) *Criteria for affordable housing unit transfers*: Affordable housing units may be transferred from sender sites and reestablished at receiver sites in the same ROGO subarea if the receiver site(s) is (are) not located:

(i) In a V zone pursuant to Section 9.5-122.3(a)(11);

(ii) On Big Pine or No Name Keys, unless the sender unit was lawfully established on Big Pine or No Name Keys;

(iii) In a Tier 1 area; or

(iv) In a designated Special Protection Area in which development resulting from the transfer would result in any clearing of native vegetation.

(3) *Criteria for market rate dwelling unit transfers*: Market rate dwelling units may be transferred from sender sites and reestablished at receiver sites in the same ROGO subarea if:

(i) The receiver site(s) is (are) not located:

(A) In a V zone pursuant to Section 9.5-122.3(a)(11);

(B) On Big Pine or No Name Keys, unless the sender unit was lawfully established on Big Pine or No Name Keys;

(C) In a Tier 1 area; or

- (D) In a designated Special Protection Area in which development resulting from the transfer would result in any clearing of native vegetation;

and

(ii) The transfer of market rate dwelling units arises from a development or similar agreement with Monroe County that specifically sets forth the number of market rate dwelling units to be transferred and which establishes deed-restricted affordable or employee housing either at the sender site or at another site or sites. Redevelopment of mobile home and multi-unit residential developments, in addition to complying with any otherwise applicable land development regulations, shall establish thirty percent (30%) or other required minimum set aside of deed-restricted affordable housing units in accordance with Section 9.5-266. This subsection establishes no right to transferability absent an agreement voluntarily reached with Monroe County.

(c) *Type of development not affected; Procedures for transfer off-site:* A pre-application conference and, at a minimum, a minor conditional use permit shall be required for both the sender site and the receiver site. A sender unit or space shall be assigned a unique identifier number that shall be used for tracking and monitoring by the planning department. The unique identifier number shall be itemized in the conditional use permits required for both the sender and receiver sites. No building permit shall be issued for a new unit on the receiver site until one (1) of the following conditions is met:

- (1) The unit is demolished pursuant to a validly issued demolition permit and a final inspection for the demolished unit or space has been completed by the building department for the sender site; or
- (2) The unit is removed pursuant to a development approval, development order, or a development permit is issued and a final inspection for the removed unit is completed by the building department for the sender site; or
- (3) The status of the unit or replacement unit on a sender site complies with the terms of any authorizing agreements with Monroe County.

(d) *Development not impacting hurricane evacuation times:*

- (1) Any applicant that can demonstrate with a traffic study acceptable to Monroe County traffic engineers that their proposed development will not impact hurricane evacuation times.
- (2) All previously authorized residential dwelling units to be located in the area designated as Zone 7 (North Key Largo area) that the 1989 Transportation Analysis found to comply with the above criteria are exempt.

(e) *Public/governmental uses:* Public/governmental uses, including capital improvements [as defined by Section 9.5-4(C-5)] and public buildings [as defined by Section 9.5-4(P-18)].

(f) *Other nonresidential development:* Any other use, development, project, structure, building, fence, sign or activity which does not result in a new residential dwelling unit.

(g) *Vested rights:* Landowners with a valid, unexpired development of regional impact approval granted by the County prior to July 13, 1992 shall be exempt from the residential ROGO system.

III. FINDINGS OF FACT

1. Staff finds the amendments to be consistent with the goals, objectives and policies of the Monroe County Year 2010 Comprehensive Plan.
2. Staff also notes that on April 12, 2006 the Planning Commission recommended adoption of the County's inclusionary housing ordinance, which ordinance was adopted by the BOCC on April 19, 2006 as Ordinance 017-2006. On June 30, 2006, the DCA published a final order approving Ordinance 017-2006. That Ordinance requires 30% affordable set-asides for redeveloped trailer parks, though it expressly contemplates and anticipates that owners of parks and other de facto affordable housing resources will come forward with proposals whereby the County may acquire existing affordable housing stocks, in some cases in exchange for the ability to transfer offsite an agreed number of ROGO-exempt market rate dwelling units.
3. Particularly, Staff finds the amendments to be consistent with Objective 601.3 of the 2010 Comprehensive Plan which directs the County to implement efforts to eliminate substandard housing and to preserve, conserve and enhance the existing housing stock.
4. Staff finds the amendments to be consistent with Policy 601.1.12, as well as Objectives 601.2 and 601.6.
5. Staff finds the proposed amendments to be consistent with Chapter 380.0552(7) F.S., "Principals for Guiding Development" which requires the County to conduct programs and regulatory activities to (j) make available adequate affordable housing for all sectors of the population of the Florida Keys.
6. Staff finds the amendments to be consistent with F.A.C. Chapters 9J-5, Florida Statutes, Chapter 163 and The Principles for Guiding Development.

IV. PROPOSED TEXT CHANGE

Please see attached ordinance.

V. RECOMMENDED ACTION

Based on the Findings and the recommendations of Workforce Housing Task Force, its counsel and Planning Staff, and in light of current negotiations between the County and trailer park owners and recent adoption of the inclusionary housing ordinance by the BOCC and DCA, the Development Review Committee recommends the Planning Commission's **APPROVAL** of a resolution recommending that the Monroe County Board of County Commissioners adopt by ordinance the proposed text change to Section 9.5-120.4 of the Monroe County Land Development Regulations.

ORDINANCE NO. ____ - 2006

AN ORDINANCE OF THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING SEC. 9.5-120.4 OF THE LAND DEVELOPMENT REGULATIONS RELATING TO DWELLING UNIT TRANSFER AUTHORIZATION FOR DEVELOPMENT NOT AFFECTED BY RESIDENTIAL ROGO; AMENDING AND/OR ADDING FOR CONSISTENCY PURPOSES RELATED PROVISIONS; PROVIDING FOR SEVERABILITY AND REPEAL OF INCONSISTENT PROVISIONS; PROVIDING EFFECTIVE DATE; PROVIDING FOR INCORPORATION IN THE MONROE COUNTY CODE OF ORDINANCES

WHEREAS, the Board of County Commissioners has considered the comments of the public, recommendations of the Planning Commission, recommendations of staff and the Workforce Housing Task Force and its counsel, and other matters, and;

WHEREAS, the Board of County Commissioners makes the following Findings of Fact:

1. Monroe County and its municipalities have a mutual interest in preserving and providing affordable housing Countywide.
2. The lack of sufficient affordable housing opportunities for the local workforce creates serious risks to the local economy.
3. The existing inventory of housing that is affordable to residents of the County is at serious risk due to conversions to market rate, second home and high-end housing.
4. Mobile homes represent the least expensive housing type and therefore the housing type most available to the critical workforce and County residents at median and moderate income levels.
5. There is a current unmet need of about 7,317 affordable units in the County.
6. The amendments proposed herein provide flexible guidelines for the County designed to further the use of negotiated development agreements between property owners, developers, the County, municipalities and the state land planning agency to preserve, stabilize and increase the stock of long-term affordable and employee housing in the County.
7. These amendments to the land development regulations specifically further Fla. Stat. § 163.3202(3) by implementing innovative land development regulation provisions such as transfer of development rights, incentive and inclusionary housing.

8. These amendments to the land development regulations are necessary to ensure that, despite the limited availability of developable lands, the County's existing and future housing stock includes adequate affordable housing opportunities.

9. The proposed amendments to the land development regulations are consistent with and further goals, objectives and policies of the Year 2010 Comprehensive Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THE FOLLOWING: That the preceding findings support its decision to approve the amendments to the land development regulations of the Monroe County Code as provided herein:

Section 1. Repeal Sec. 9.5-120.4 and replace with the following:

Sec. 9.5-120.4. Type of development not affected.

The residential ROGO shall not apply to the development described below:

(a) *Redevelopment on-site:* Redevelopment, rehabilitation or replacement of any lawfully established residential dwelling unit or transient unit which does not increase the number of residential dwelling units or transient units above that which existed on the site prior to the redevelopment, rehabilitation or replacement.

(b) *Transfer off-site:* Transfer of lawfully established residential dwelling units or transient units from a parcel or from parcels ("sender site(s)") to another parcel or other parcels ("receiver site(s)") shall be permitted where the development of new residential units or transient units resulting from the transfer conforms both to all otherwise applicable standards in the land development regulations and those additional standards set forth below.

(1) *Criteria for hotel unit and recreational vehicle space transfers:* Hotels, hotel rooms or recreational vehicle spaces may be transferred from sender sites and reestablished at receiver sites continuing the same uses and in the same ROGO subarea if the:

(i) Sender site unit or space was used as a hotel, hotel room or recreational vehicle space in accordance with the governing definitions set forth in Section 9.5-4; and

(ii) The receiver site(s) is (are) not located:

(A) In a V zone pursuant to Section 9.5-122.3(a)(11);

(B) On Big Pine or No Name Keys, unless the sender unit or space was lawfully established on Big Pine or No Name Keys;

- (C) In a Tier 1 area; or
- (D) In a designated Special Protection Area in which development resulting from the transfer would result in any clearing of native vegetation.

(2) *Criteria for affordable housing unit transfers:* Affordable housing units may be transferred from sender sites and reestablished at receiver sites in the same ROGO subarea if the receiver site(s) is (are) not located:

- (i) In a V zone pursuant to Section 9.5-122.3(a)(11);
- (ii) On Big Pine or No Name Keys, unless the sender unit was lawfully established on Big Pine or No Name Keys;
- (iii) In a Tier 1 area; or
- (iv) In a designated Special Protection Area in which development resulting from the transfer would result in any clearing of native vegetation.

(3) *Criteria for market rate dwelling unit transfers:* Market rate dwelling units may be transferred from sender sites and reestablished at receiver sites in the same ROGO subarea if:

- (i) The receiver site(s) is (are) not located:
 - (A) In a V zone pursuant to Section 9.5-122.3(a)(11);
 - (B) On Big Pine or No Name Keys, unless the sender unit was lawfully established on Big Pine or No Name Keys;
 - (C) In a Tier 1 area; or
 - (D) In a designated Special Protection Area in which development resulting from the transfer would result in any clearing of native vegetation;

and

- (ii) The transfer of market rate dwelling units arises from a development or similar agreement with Monroe County that specifically sets forth the number of market rate dwelling units to be transferred and which establishes deed-restricted affordable or

employee housing either at the sender site or at another site or sites. Redevelopment of mobile home and multi-unit residential developments, in addition to complying with any otherwise applicable land development regulations, shall establish thirty percent (30%) or other required minimum set aside of deed-restricted affordable housing units in accordance with Section 9.5-266. This subsection establishes no right to transferability absent an agreement voluntarily reached with Monroe County.

(c) *Type of development not affected; Procedures for transfer off-site:* A pre-application conference and, at a minimum, a minor conditional use permit shall be required for both the sender site and the receiver site. A sender unit or space shall be assigned a unique identifier number that shall be used for tracking and monitoring by the planning department. The unique identifier number shall be itemized in the conditional use permits required for both the sender and receiver sites. No building permit shall be issued for a new unit on the receiver site until one (1) of the following conditions is met:

- (1) The unit is demolished pursuant to a validly issued demolition permit and a final inspection for the demolished unit or space has been completed by the building department for the sender site; or
- (2) The unit is removed pursuant to a development approval, development order, or a development permit is issued and a final inspection for the removed unit is completed by the building department for the sender site; or
- (3) The status of the unit or replacement unit on a sender site complies with the terms of any authorizing agreements with Monroe County.

(d) *Development not impacting hurricane evacuation times:*

- (1) Any applicant that can demonstrate with a traffic study acceptable to Monroe County traffic engineers that their proposed development will not impact hurricane evacuation times.
- (2) All previously authorized residential dwelling units to be located in the area designated as Zone 7 (North Key Largo area) that the 1989 Transportation Analysis found to comply with the above criteria are exempt.

(e) *Public/governmental uses:* Public/governmental uses, including capital improvements [as defined by Section 9.5-4(C-5)] and public buildings [as defined by Section 9.5-4(P-18)].

(f) *Other nonresidential development*: Any other use, development, project, structure, building, fence, sign or activity which does not result in a new residential dwelling unit.

(g) *Vested rights*: Landowners with a valid, unexpired development of regional impact approval granted by the County prior to July 13, 1992 shall be exempt from the residential ROGO system.

Section 2. Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 3. Conflicting Provisions.

In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

Section 4. Transmittal.

This ordinance shall be transmitted by the Planning and Environmental Resources Department to the Florida Department of Community Affairs to determine the consistency of this ordinance with the Florida Statutes and as required by F.S. 380.05(6) and (11).

Section 5. Filing.

This ordinance shall be filed in the Office of the Secretary of State of Florida but shall not become effective until a notice is issued by the Department of Community Affairs or Administration Commission approving the ordinance.

Section 6. Effective Date.

This ordinance shall become effective as provided by law and stated above. Where Comprehensive Plan amendments may be required in order for any part of this ordinance to be deemed consistent with the Comprehensive Plan, the effective date of such part shall be as of the effective date of the required Comprehensive Plan amendment and as otherwise required by law.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the ____ day of _____, 2006.

Mayor Charles "Sonny" McCoy	_____
Mayor Pro Tem Dixie Spehar	_____
Commissioner George Neugent	_____
Commissioner Glenn Patton	_____
Commissioner David Rice	_____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY: _____
Mayor Charles "Sonny" McCoy

(SEAL)

ATTEST: DANNY L. KOLHAGE, CLERK

Deputy Clerk

APPROVED AS TO FORM:

County Attorney